

Remarks

Claims 33-446 are pending in this application. Applicants respectfully request reconsideration of the rejections and objections in view of the following remarks.

Claims 1, 22-24, and 26-32 have been canceled. Applicants respectfully request reconsideration of the pending claims in view of the following remarks.

Claims 347-446 have been added. These claims resemble claims 73-132, 245-264, and 285-304, yet recite ATCC Deposit Number 75698 rather than ATCC Deposit Number 97149. The added claims are fully supported in the specification, for example, at page 4, lines 11-16 and at page 12, lines 17-30. Therefore, no new matter has been added by way of the amendment.

Applicants acknowledge that claims 45-52, 65-72, 85-92, 105-112, 125-132, 157-164, 177-184, 197-204, 217-224, 237-244, 257-264, 277-284, 297-304, 318-325, and 339-346 have been withdrawn from consideration as being drawn to a non-elected invention. Applicants note that the withdrawn claims are related to the examined claims as between a product and a process for using the product. Further, the process of claims 45-52, 65-72, 85-92, 105-112, 125-132, 157-164, 177-184, 197-204, 217-224, 237-244, 257-264, 277-284, 297-304, 318-325, and 339-346 includes all the limitations of the product of claims to which they depend. In light of the decisions in *In re Ochiai*, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995) and *In re Brouwer*, 77 F.3d 422, 37 USPQ 2d 1663 (Fed. Cir. 1996), a notice was published in the Official Gazette which set forth new guidelines for the treatment of product and process claims. See 1184 OG 86 (March 26, 1996). Specifically, the notice states that "in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and the withdrawn process claim depends from or otherwise includes all the limitations of an allowed product claim." *Id.* Accordingly, Applicants respectfully request that if any of the product claims are found allowable, then the process claims of 45-52, 65-72, 85-92, 105-112, 125-132, 157-164,

177-184, 197-204, 217-224, 237-244, 257-264, 277-284, 297-304, 318-325, and 339-346 be rejoined and examined for patentability.

A. Deposit

The Examiner rejected claims 73-84, 93-104, 113-124, 245-256, 285-296, and 326-338 under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter which was not described in the specification. The Examiner kindly suggested that the enablement requirement of 35 U.S.C. § 112 may be satisfied by a deposit of the plasmid.

To demonstrate full compliance with 37 C.F.R. §§ 1.803-1.809 and to satisfy the requirement of 35 U.S.C. § 112, first paragraph, Applicants have already assured the Examiner that ATCC Deposit No. 97149 has been deposited under the terms of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure with the following International Depository Authority: American Type Culture Collection (ATCC), 10801 University Blvd., Manassas, Virginia 20110-2209, USA, in the Election and Preliminary Amendment filed December 15, 1999. Applicants respectfully request that the Examiner note compliance with the requirements of 35 U.S.C. § 112 and withdraw the rejection.

Additionally, to demonstrate full compliance with 37 C.F.R. §§ 1.803-1.809 and to satisfy the requirement of 35 U.S.C. § 112, first paragraph, Applicants assure the Examiner that ATCC Deposit No. 75698 has been deposited under the terms of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure with the following International Depository Authority: American Type Culture Collection (ATCC), 10801 University Blvd., Manassas, Virginia 20110-2209, USA. The deposit comprise a recombinant nucleic acid vector into which cDNA sequence encoding Vascular Endothelial Growth Factor 2 (VEGF-2) has been

inserted. The deposit was made on March 4, 1994 as disclosed on page 4, line 15 of the instant application.

In accordance with MPEP § 2410.01 and 37 C.F.R. § 1.808, assurance is hereby given that all restrictions on the availability to the public of the above nucleic acid molecule encoding human VEGF-2, will be irrevocably removed upon the grant of a patent based on the captioned application, and that the deposit will be replaced if viable samples cannot be dispensed by the ATCC, except as permitted under 37 C.F.R. § 1.808(b).

B. Double Patenting

The Examiner rejected claims 33-44, 53-64, 73-84, 93-104, 113-124, 133-156, 165-176, 185-196, 205-216, 225-236, 245-256, 265-276, 285-296, 305-317, and 326-338 under the judicially created doctrine of double patenting over claims 1-60 of U.S. Patent 5,932,540. Although applicants respectfully disagree, in the interest of facilitating prosecution, applicants submit herewith a terminal disclaimer in full compliance with 37 C.F.R. 3.73(b). Applicants respectfully request that the rejection of claims 33-44, 53-64, 73-84, 93-104, 113-124, 133-156, 165-176, 185-196, 205-216, 225-236, 245-256, 265-276, 285-296, 305-317, and 326-338 be withdrawn.

Conclusion

In view of the foregoing remarks, Applicants believe they have fully addressed the Examiner's concerns and that this application is now in condition for allowance. An early notice to that effect is urged. A request is made to the Examiner to call the undersigned at the phone number provided below if any further action by Applicants would expedite allowance of this application.

If there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

Dated July 10, 2000 Michele M. Wales
Michele M. Wales (Reg. No. 43,975)
Attorney for Applicants

Human Genome Sciences, Inc.

9410 Key West Avenue
Rockville, MD 20850
Telephone: (301) 610-5772
Facsimile: (301) 309-8439

Enclosures
MMW/lcc